Criminal Justice System and Governance in India

by Bhupinder Singh[*]

ABSTRACT: Criminal justice is a system of policies and organizations used by national and local governments to maintain social control, prevent and regulate crime, and penalize those who break the law. Law enforcement like- police and prosecutors, courts, defense attorneys, and local jails and prisons are the central agencies charged with these duties, which oversee the procedures for arrest, charging, adjudication, and punishment of those found guilty. The need for criminal justice administration arose from the state's decision to impose the high standard of human conduct required to protect people and communities. It seeks to fulfill its protection goal through enforcement by reducing crime risk and apprehending, prosecuting, convicting, and sentencing those who violate rules and laws promulgated by society. The purposeful administration of criminal justice cannot be effectively implemented without proper orientation at all levels and the coordinated functioning of all three agencies involved in this process, i.e., the police, the criminal courts and the correctional administration consisting of the prison service, the probation service and the correctional agencies only when this vital coordination is secured at all stages and at all levels, will it be possible to achieve the real purpose of the crime prevention by the reformation and the rehabilitation of the criminals.

KEYWORDS: Administration; Crime; India; Protection; Justice; Reformation.

I. Introduction

The definition of crime is evolving, and it has developed in tandem with society's socioeconomic background. It has always been dependent on the strength and movement of public opinion and social sanctions in the same

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country. The extent of crime appears to vary among societies and communities, and "crime" seems to encompass both the reaction to and the behavior itself over time for a given society or community.

Criminal justice is a system of policies and organizations used by national and local governments to maintain social control, prevent and regulate crime, and penalize those who break the law. Law enforcement (police and prosecutors), courts, defense attorneys, and local jails and prisons are the central agencies charged with these duties, which oversee the procedures for arrest, charging, adjudication, and punishment of those found guilty. Criminal justice administration is a term used to describe the process of dealing with crime. When a criminal act occurs, it is the criminal justice system's responsibility to determine if the action has violated individuals' rights and freedoms and, if so, to take the necessary steps to correct the imbalance created by the criminal act. As a result, the criminal justice system is intended to address only one aspect of the crime problem: justice. In carrying out this function, the criminal justice system is forced to take a solely post-oriented approach, focusing on past criminal acts. The need for criminal justice administration arose from the state's decision to impose the high standard of human conduct required to protect people and communities. It aims to achieve its protection goal through enforcement by lowering crime risk and apprehending, investigating, convicting, and sentencing those who break society's rules and laws.[1]

II. Functioning of Criminal Procedure Law

The principles of natural justice are implicitly embodied in existing procedural rules. On the criminal side, it covers concepts such as fair play, representation, adversarial system, protection from double jeopardy, unlawful detention, and so on. On the civil side, the principles of finality, avoidance of diversity, protection of persons not competent to contract and indigent persons, protection of women in money decrees, and provisions for judgment debtors' protection without prejudice to the decree holder's rights have all been incorporated.

A specific emphasis has been placed on the use of alternative dispute resolution methods to resolve disputes. The Criminal Procedure Code of 1973 contains provisions for the administration of justice to all as few of important points described in the following sub-sections.

[1] NALINI KANTA DUTTA, ORIGIN AND DEVELOPMENT OF CRIMINAL JUSTICE SYSTEM IN INDIA (1990), at.12.

A. Protection to the Accused at the Time of Arrest

The procedure insures that a person arrested shall not be subjected to more restraint than is necessary to prevent his escape.[2]

Section 50 states that the person arrested must be informed of the reason for their arrest and their right to bail. Any police officer or other person who arrests a person without a warrant must immediately notify him of the nature of the offense for which he has been arrested, as well as any other grounds for his arrest. Suppose a police officer arrests a person without a warrant for any reason other than a non-bailable offense. In that case, he must tell the person arrested that he is entitled to bail and that he may arrange for sureties on his behalf. The Code guarantees an arrested person's right to be examined by a medical practitioner at the request of the arrested person if a person who has been arrested, whether on a charge or not, alleges anything at the time he is brought before a magistrate or at any time during his detention in custody that an examination of his body will provide evidence that will disprove his involvement in any crime.[3]

B. Fair Trail and Principles of Natural Justice

No one should be sentenced without a hearing, according to natural law. As a result, the fundamental requirement of the principle is that the person being prosecuted be informed about the circumstances in which he is in violation of the law. To accomplish this, the court must as per the accused is entitled to a copy of the police report and all documents under Section 207. It stipulates that in any case where the investigation is based on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the document as

> the police report; the first information report recorded under section 154; the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding there from any part in regard to which a request for such exclusion has been made by the police officer under subsection (6) of

[2] The Code of Criminal Procedure (1973), section 49.
[3] *Id.*, section 49 and 54.

> section 173; the confessions and statements, if any, recorded under section 164; any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173; is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.[4]

Similarly, Section 208 mandates the provision of copies of statements and documents to defendants in other Court of Session-tried cases. Indeed

> Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the documents namely […] the statements recorded under section 200 or section 202, or all persons examined by the Magistrate; the statements and confessions, if any, recorded under section 161 or section 164; any documents produced before the Magistrate on which the prosecution proposes to rely.[5]

C. Notice to the Accused Regarding the Trial

At the outset of the proceedings, the standards of natural justice are still observed. The allegation is sent to the defendant as a charge or a notice of accusation. The charge6 is framed in warrant cases or cases exclusively triable by Court of Session. In summons cases, however, clear notice of indictment is issued. In summary trials, the victim is given notice of the offense's substance and can justify the substance. Section 211 is concerned with Chargeable content:

> (1) Every charge under this Code shall state the offence with which the accused is charged.
> (2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.
> (3) If the law which creates the offence does not give it any specific name so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.
> (4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

[4] *Id,* section 207.
[5] *Id*, section 208.
[6] *Id*, section 211.

> (5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.
> (6) The charge shall be written in the language of the Court and If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact date and place of the previous, conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed.

D. Proceedings of the Cases

Specific guidelines have been introduced into the code to ensure that the fair trial rules are followed in letter and spirit. Proof must be taken in the presence of the accused, according to Section 273. Unless otherwise specified, all testimony taken during a trial or other proceeding must be taken in the presence of the accused or, if his attendance is not required, in the presence of his pleader. Except in such cases, such as rape, where the court may order the trial in camera, the court that is trying the accused is always open.

E. Right of the Accused Against Double Jeopardy

The Constitution ensures that "No person shall be prosecuted and punished for the same offence more than once".[7] This principle is also enshrined in Section 300 of the Code of Criminal Procedure, 1973, in a more comprehensive form, which encompasses cases in which the accused is convicted or even discharged. Section 300 said that person once convicted or acquitted not to be tried for same offence.

> (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under subsection (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

[7] The Constitution of India (1950), art. 20(2).

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220.
(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened or were not known to the Court to have happened, at the time when he was convicted.
(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.
(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.
(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 or of section 188 of this Code.

F. Accused Right Be Defended by a Pleader of his Choice.

The right of the individual against whom proceedings are brought to be defended is provided in Section 303. Every person convicted of an offense in a Criminal Court or the subject of litigation under this Code has the right to be represented by a pleader of his choosing.

G. Legal Aid to Accused at State Expense in Certain Cases

(1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.
(2) The High Court may, with the previous approval of the State Government make rule providing for the mode of selecting pleaders for defence under sub-section (2); the facilities to be allowed to such pleaders by the Courts; the fee payable to such pleaders by the Government, and generally, for carrying out the purposes of sub-section (1).

> (3) The State Government may order, by notification, that the provisions of sub-sections (1) and (2) apply to any class of trials before other courts in the State as they apply to trials before the Courts of Session as of the date specified in the notification.[8]

The right to free legal assistance does not require the accused to request it, and the Court is required to remind the accused of his right to free legal assistance.[9]

H. Provision Deal with when the Accused Person is Unsound Mind

Section 328 provides procedure in case of accused being lunatic.

> (1) When a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officer as a witness and shall reduce the examination to writing.
> (2) Pending such examination and inquiry, the Magistrate may deal with such person in accordance with the provisions of section 330.
> (3)"If such Magistrate is of opinion that the person referred to in sub-section (1) is of unsound mind and consequently incapable of making his defence, he shall record a finding to that effect and shall postpone further proceedings in the case.

Similarly, if a person of unsound mind is brought before a court, the process is the same if it appears to the Magistrate or Court of Session during a person's trial before a Magistrate or Court of Session that the person is of unsound mind and therefore incapable of making his defense.

> (1) In that case, the Magistrate or Court can dismiss the case., the Magistrate or Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case. (2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Magistrate or Court.[10]

[8] Indian Code of Criminal Procedure (1973), section 304.
[9] Delhi High Court, Matloob v. State (Delhi Admn.), 3 Crimes 989, Judgment (Apr. 23,1997).
[10] The Code of Criminal Procedure (1973), section 329.

I. Provision as to Bail and Bonds

Following are the provisions in what cases bail to be taken like:

> (1) When a person other than a person convicted of a non-bailable offence is arrested or detained without warrant by a police officer, or appears or is brought before a court, and is prepared to give bail at any time while in the custody of such officer or at any point of the trial before such Court, such person shall be released on bail.
> (2) Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446.[11]

As well as

> It is true that Supreme Court does not interfere with an order granting bail but judicial discipline will be sacrificed at the alter of judicial discretion if jurisdiction under Article 136 is refused to be exercised.[12]

L. Section 437 Provides when Bail may be Taken in Case of Non-Bailable Offence-

> (1) When a person convicted of or suspected of, committing a non-bailable crime is arrested or detained without warrant by a police station officer or appears or is brought before a court other than the High Court or Court of Session, he can be released on bail, but such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life; such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence.
> (2) If it appears to such officer or Court at some point during the investigation, examination, or trial, as the case may be, that there are no fair reasons for assuming that the accused has committed a non-bailable offence, the accused may be released, but that

[11] *Id.*, section 436.
[12] Supreme Court of India, State of Maharashtra v. Captain Buddhikota Subha Rao, AIR 1989 SC2292, Judgment (Sept. 29, 1989).

there are sufficient grounds for further inquiry into his guilt, the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail, or, at the discretion of such officer or Court on the execution by him of a bond without sureties for his appearance as hereinafter provided.
(3) When a person is convicted or suspected of committing an offence punishable by seven years or more in prison, or an offence under Chapter VI, Chapter XVI, or Chapter XVII of the Indian Penal Code, 1860 or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1) the Court may impose any condition which the Court considers necessary in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected or otherwise in the interests of justice.
(4) An officer or a Court releasing any person on bail under sub-section (1), or sub-section (2), shall record in writing his or its reasons or special reasons for so doing.
(5) Any court that has released a person on bail under subsection (1) or (2) can, if it believes it is appropriate, order that the person be arrested and committed to custody.
(6) If, in any case, triable by a Magistrate, the trial of a person convicted of any non-bailable offence is not completed within sixty days of the first date set for taking evidence in the case, that person shall be released on bail to the satisfaction of the Magistrate if he is in custody for the entire time, except for reasons to be reported in writing. the Magistrate otherwise directs.
(7) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.[13]

M. Saving of Inherent Power of High Court Under Section 482

Nothing in this Code shall be construed to restrict or affect the High Court's inherent powers to make such orders as may be required to carry out any order made under this Code, avoid misuse of any Court's procedure, or protect the ends of justice otherwise.

(i) When the investigation of the case had been handed over to the CID because of unsatisfactory investigation by the police, the quashing of charges under section 302 read with section 120B, IPC against the accused in exercise of powers under section 482 by the High Court on the conclusion of the inadequacy of evidence was unwarranted as

[13] Supreme Court of India, Anil Sharma v. State of Himachal Pradesh, 3 Crimes 135, Judgment (Sept 9, 1997).

at the stage of framing of charges, meticulous consideration of evidence and material by the Court was not required.[14]

(ii) In exercising jurisdiction under section 482 High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not".[15]

(iii) To prevent abuse of the process of the Court, High Court in exercise of its inherent powers under section 482 could quash the proceedings but there would be justification for interference only when the complaint did not disclose any offence or was frivolous vexatious or oppressive".[16]

(iv) Where there was some discrepancy mainly in regard to the implications of respondent by name in the FIR and the statement of the witnesses recorded during the investigation, the practice of prejudging the question by the High Court without affording reasonable opportunity to the prosecution to substantiate the allegations have on more than one occasion been found fault with by the Supreme Court, thus there is no justification by the High Court to interfere with the prosecution at the preliminary stage.[17]

(v) If the allegation made in the First Information Report are taken at their face value and accepted in their entirety do not constitute an offence the criminal proceedings constituted on the basis of such FIR should be quashed.[18]

(vi) It amounts to abuse of the process of the Court if without prima facie case having been made out a person is summoned to face trial in a criminal proceeding.[19]

(vii) It is well settled that the inherent powers under section 482 can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. Further, the power being an extraordinary one, it has to be exercised sparingly". If these considerations are kept in mind there will be no inconsistency between sections 397(2) and 482 of this Code.[20]

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[14] Supreme Court of India, RadheyShyam v. KunjBehari, AIR 1990 SC 121, Judgment (Oct. 17, 1989).
[15] Supreme Court of India, State of Bihar v. Murad Ali Khan, AIR 1989 SC 1, Judgment (Oct. 10, 1988).
[16] Supreme Court of India**,** Dhanlakshmi (Mrs.) v. R. Prasana Kumar, AIR 1990 SC 494, Judgment (Nov. 15, 1989).
[17] Supreme Court of India, State of Bihar v. Raj Narain Singh, Cr. LJ 1416 (SC), Judgment (Feb. 13, 1991).
[18] Supreme Court of India, State of Uttar Pradesh through CBI, SPE Lucknow v. R.K. Srivastava, Cr LJ 230, Judgment (Aug. 11, 1989).
[19] Patna High Court**,** Laloo Prasad v. State of Bihar, 2 Crimes 498, Judgment (Nov. 1, 1996).
[20] Orissa High Court, BasudevBhoi v. BipadabhanjanPuhan, 2 Crimes 331, Judgment (Oct. 15, 1996).

(viii) If the prosecution has been instituted within six months of Bengal Excise Act, 1909 under Section 92 alleged there is no question of producing any sanction as the Magistrate would then be free to take cognizance under the Act. Reasoning adopted by the learned Single Judge that steps for obtaining sanction should have been adopted before the expiry of first six months period has no support in section 92 and quashing of proceeding was not proper.[21]

(ix) Necessary ingredients of offence of cheating or criminal branch of trust have not been made out but the attendant circumstances indicate that the FIR was lodged to prompt the filing of criminal complaint against the informant under section 138 N.I. Act Quashing of FIR was proper to avoid the abuse of process.

(x) FIR lodges to preempt the filing of criminal complaint against the informant under section 138 N.I. Act Quashing of FIR proper.[22]

(xi) Regarding the quashing of grievances and inquiries based on the complainant's FIR, the High Court was not justified in intervening with the process and quashing the proceedings by an elaborate judgment on the merits. It was premature to conclude that section 195 of the Cr.P.C. will be a limit. Order quashing the two complaint set aside.[23]

(xii) The extra-ordinary power under section 482 of Code have to be exercised sparingly and should not be resorted to like remedy of appeal or revision.[24]

(xiii) In absence of any allegation in complaint that the petitioner was a director on the date when cheque was issued by company or that he was in charge of and was responsible to company, the complaint is liable to be quashed.[25]

(xiv) When the provisions under section 37 of N.D.P.S. are applicable and operative with non obstanate clause, the powers of High Court remains restricted by limitation under section 37 (1)(b) of Act in considering bail application of accused charged for offence under N.D.P.S. Act, then the accused not entitled to grant of interim bail.[26]

(xv) In absence of any valid ground, the F.I.R. lodged against immigration consultant for violating sections 10, 16 of Emigration Act by issuing advertisement, High Court cannot interfere at the stage of F.I.R.

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[21] Supreme Court of India, State of West Bengal v. Rashmoy Das, AIR 2000 SC 228, Judgment (Dec. 1, 1999).
[22] Supreme Court of India, Sunil Kumar v. Escorts Yamaha Motors Ltd., AIR 2000 SC 27, Judgment (Oct. 27, 1999).
[23] Supreme Court of India, Manohar v. Ashoka, AIR 2000 SC 202, Judgment (Nov. 17, 1999).
[24] Delhi High Court, Kavita (Smt.) v. State, 2000 Cr LJ 315 (Del), Judgment (Sept. 9, 1999).
[25] High Court of Madras, M. Chockalingam v. Sundaram Finance Service Ltd., 2000 Cr LJ 137, Judgment (Aug 6, 1999).
[26] Delhi High Court, Islamuddin v. State of Delhi, 2000 Cr LJ 108, Judgment (Aug. 16, 1999).

N. Order for Maintenance of Wives, Children and Parents

The civil rights of maintenance have been implemented by criminal law to provide a quick remedy for maintenance with the social goal of preventing destituteness and vagrancies among helpless women and children. Penal effects are added to the respondent's default in order to give the clause teeth. Section 125 provides for order for maintenance of wives, children and parents. "If any person having sufficient means neglects or refuses to maintain his wife, unable to maintain herself, or his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct". To make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

III. Conclusion

The purposeful administration of criminal justice cannot be effectively implemented without proper orientation at all levels and the coordinated functioning of all three agencies involved in this process, i.e., the police, the criminal courts and the correctional administration consisting of the prison service, the probation service and the correctional agencies only when this vital coordination is secured at all stages and at all levels, will it be possible to achieve the real purpose of the crime prevention by the reformation and the rehabilitation of the criminals.